



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

BY HAND DELIVERY

DEC 13 1995

Daniel F. Reidy, Esq.
545 Sansome Street, Su. 825
San Francisco, CA 94111

Re: Unilateral Administrative Order
Central Eureka Mine Site

Urgent Legal Matter

Dear Mr. Reidy:

Pursuant to your agreement in our conversation of December 12, 1995, the United States Environmental Protection Agency ("EPA") is serving upon you, on behalf of your clients, Alpheus Kaplan and Nehemiah Development Company ("Kaplan/NDC"), the enclosed Unilateral Administrative Order ("UAO"), EPA Docket No. 96-06, which requires your clients to perform certain response actions at the Central Eureka Mine ("CEM") site, located in Sutter Creek, Amador County, California. The EPA acknowledges that Kaplan/NDC have taken expended efforts to cooperate with the U.S. EPA at this site, including participating in settlement negotiations over the past six months and initiating the performance of certain work at the Site. Unfortunately, Kaplan/NDC have failed to continue performing work at the Site for approximately the past two months, notwithstanding several attempts and/or offers from EPA to meet with your clients to resolve the various issues raised by your clients over this same period of time. Based on the failure of Kaplan/NDC to perform any work at the CEM site for the past two months, and, as set forth in your letter of December 6, 1995, their decision to forgo any further involvement in the on-going settlement negotiations, U.S. EPA is ordering Kaplan/NDC to conduct a Partial Removal Action pursuant to Section 106 of CERCLA. It is unfortunate that this action must be taken, as EPA continues to believe that the best course is for Kaplan/NDC is to be a party to an Administrative Order on Consent ("AOC") and receive the legal benefits contained therein.

In your letter of December 6, 1995, you articulated several reasons underlying the Kaplan/NDC decision not to be a party to the AOC. EPA will respond to each individually below.

Initially, you state that Kaplan/NDC had difficulties in obtaining the specifications for all of the residential yards in which they were to perform work. While your clients were not

given all such specifications when they initiated their work, on or about November 16, 1995, EPA provided all requested specifications to your clients' contractor, Robert Woolrich. More importantly, as was previously stated in EPA's letter of November 2, 1995, your contractor was given a complete walk through, a yard specific diagram, and specific directions as to the work to be performed in each yard prior to initiation of any work in a particular yard. As such, before beginning work in any yard, Mr. Woolrich was fully advised as the work to be done.

Secondly, you again raise the concern that EPA has not provided Kaplan/NDC the interim sign-off for the first group of yards worked on. EPA agreed to this as a conceptual matter quite a while ago. As was stated in EPA's correspondence of November 2, 1995, however, one of the reasons EPA has not signed the interim sign-off is the pending dispute between Kaplan/NDC and the Sullivans regarding the funding mechanism for relandscaping the Sullivan's property. At this time, EPA has not been informed that this dispute has been resolved. EPA was not a party to the agreement between Kaplan/NDC and the Sullivans, and therefore, EPA continues to believe it is not appropriate to execute the interim sign-off, as the interim sign off includes completion of all work associated with the Sullivan's property. As soon as your clients and the Sullivans resolve this issue, EPA can determine if it is appropriate to sign the interim sign-off.

Thirdly, you asserted that your clients have concerns regarding the coordination of work schedules among the parties. As EPA informed Kaplan/NDC in its November 2nd correspondence, Kaplan/NDC have always known that they would have to coordinate their work with that being done by other parties at the site. As well, your clients were informed that none of the work in the Group six yards was in any way impacted by the culvert or Mesa work, and that such work could have proceeded apace. EPA also agreed to coordinate all work schedules to minimize the disruption of any party's work. Notwithstanding this, Kaplan/NDC have failed to date to resume work at the Site.

Finally, you again articulated your clients' displeasure with EPA's response to the results of the first phase of the bioaccessibility tests conducted by certain PRPs. EPA responded to this issue in two prior correspondence dated October 12, 1995, and November 2, 1995. As was previously articulated by EPA, the in vitro phase of the bioavailability study was, by agreement, designed to be a trigger for the performance of the in vivo phase. All parties were in agreement on this two tiered approach, and none have presented any justification to alter this agreement. Further, as was set forth in EPA's comments to the bioaccessibility report which were previously provided to you, EPA has some serious concerns/questions about the information contained in the report, and therefore, the scientific validity of the results contained therein. EPA remains willing to work with all interested parties to resolve these differences.

Please be aware that pursuant to Section XX of this Order, your clients must provide EPA with written notice of their intent to comply with the Order within two (2) days of the Effective Date of this Order. If EPA does not receive such notification from them, they will be deemed in violation of the Order, and, pursuant to Section XXIII, be potentially liable for penalties of up to \$25,000 per day for each day of noncompliance. In addition, pursuant to 42 U.S.C. § 9607(c)(3), if EPA conducts the specific response actions required of your clients by this Order because they choose not to, your clients may be liable for up to three (3) times the cost incurred by EPA performing those specific response actions.

As set forth in Section XXI of this Order, if your clients desire a conference to discuss their implementation of the Order with EPA, this request must be made within three (3) days of the date of receipt of this Order. The request for a conference must be made by telephone, followed by written confirmation, to David Rabbino (RC-3-1), Assistant Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. Mr. Rabbino may be reached at (415) 744-1336.

Respectfully,

Keith A. Takata —

Keith A. Takata, Deputy Director
Hazardous Waste Management Division

Enclosure

cc: David Rabbino, U.S. EPA, Office of Regional Counsel
Brad Shipley, U.S. EPA, OSC
Dan Ziarkowski, DTSC (w/out enlc.)
Kirk Wilkinson, Latham & Watkins (w/out encl.)
John B. Allen, Esq. (w/out encl.)
Kathleen Finnerty, Esq. (w/out enlc.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	
)	
ALPHEUS KAPLAN and)	
NEHEMIAH DEVELOPMENT COMPANY,)	U.S. EPA Docket No. 96-06
a partnership)	
)	UNILATERAL ADMINISTRATIVE
)	ORDER FOR PARTIAL
Proceeding Under Section 106(a))	PERFORMANCE OF REMOVAL
of the Comprehensive Environmental)	ACTION
Response, Compensation, and)	
Liability Act of 1980,)	
42 U.S.C. § 9606(a)).)	
)	

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued on this date pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41 and 1290.42

II. PARTIES BOUND

1. This Order shall apply to and be binding upon Alpheus Kaplan and the Nehemiah Development Company ("NDC"), a partnership in which Mr. Kaplan is a general and/or managing partner (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter Respondents' obligations under this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants which are retained by Respondents to perform the work required by this Order, within five (5) days after the Effective Date of this Order or within five (5) days of retaining their services. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order.

2. Respondents may not convey any title, easement, or other interest they may have, either individually or collectively, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the Site shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise U.S. EPA six (6) months in advance of any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 96-06, and all exhibits attached hereto. In the event of a conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"Construction" shall mean the Respondents', or their contractor's, installation/construction of the specific response actions each is required to perform, as set forth in exhibit A.

"Contractor" shall mean Respondents' contractor(s) and subcontractors contracted to perform the installation/construction, and operation and maintenance activities relating to any of the specific response actions at the Site Respondents are required to perform.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Identified Contamination" shall mean any contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site as of the effective date of EPA's Action Memorandum for the Site, dated March 21, 1995, and other technical reports reflecting the results of all sampling activities conducted at the Site, including but not limited to the Technical Assistance Team Central Eureka Mine Phase II Site Assessment Addendum Report (dated October 31, 1995).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Operation and Maintenance activities" shall include future operation and maintenance of all structures built or installed to contain the arsenic contamination at the Site until

such time as EPA approves the cessation of such activities.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States, Alpheus Kaplan, and the Nehemiah Development Company ("NDC"), a partnership.

"Action Memorandum" shall mean the Action Memorandum concurred on by the State of California, issued by the United States Environmental Protection Agency on March 21, 1995.

"Response actions" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order, as set forth in exhibit "A".

"Respondents" shall mean Alpheus Kaplan and the Nehemiah Development Company, a partnership, both individually and collectively.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Central Eureka Mine Superfund Site, which includes those parcels of land in the Gold Quartz Terrace subdivision, the Mesa d'Oro subdivision, the Vista Ray subdivision, the Central Eureka minehead, and parcel #44010072 located on the Allen Ranch, all of which are located in or near Sutter Creek, Amador County, California.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. From approximately 1912 to 1958, the Central Eureka Mine Company operated a gold mine, now known as the Central Eureka Mine, located in Amador County, California. As part of its operations, the Central Eureka Mine Company, by agreement or otherwise, created two tailings piles for the storage or disposal of tailings from its mining operations, utilizing certain parcels of land adjacent to or in proximity to the Central Eureka Mine for this purpose. One tailings pile, or upon which tailings have since come to be located, occupies those parcels of land identified on Amador County Assessor's Map, Book 18, Pages 29, 33, and 34, now known as the Gold Quartz Terrace, Vista Ray, and Mesa D'Oro subdivisions, as well as land located at the Central Eureka minehead. The second tailings pile, or upon which tailings have since come to be located, occupies certain portions of parcel #44010072 in Amador County located on the Allen Ranch Property. All of the above referenced parcels of land are located in or near Sutter Creek, California.

5. In April 1994, in response to complaints of worker exposure to mine tailings, the California Environmental Protection Agency ("Cal-EPA") collected soil samples from the site for analysis. All samples were analyzed for total metals concentrations. Chemical arsenic concentrations ranged between 107 and 473 milligrams per kilogram (mg/kg). Cal-EPA conducted

additional sampling in May 1994, collecting additional soil samples. All samples were again analyzed for total metals concentration. Total arsenic concentrations were found to range from 115 to 1320 mg/kg.

6. In July 1994, Cal-EPA requested assistance from the United States EPA Emergency Response Section ("ERS"). In August 1994, EPA took an additional 158 surface soil samples, four stream sediment samples, and two water samples for analysis for arsenic. The mean concentration of arsenic at the Site was found to be 255 mg/kg.

7. From September 1994, to January 1995, EPA took an additional 750 samples to more accurately and fully identify the extent of the arsenic contamination at the Site. The results of this sampling indicated that there was extensive arsenic contamination at the Site.

8. Based on the results of the samples taken from the Site, and a review of available literature concerning the bioavailability of arsenic, EPA determined in its Action Memorandum, dated March 21, 1995, that response actions were required to address an imminent and substantial endangerment to human health and to prevent further releases and/or threatened releases of arsenic into the environment.

9. Alpheus Kaplan and the Nehemiah Development Company, from approximately the mid-1980s to the present, individually and/or collectively, owned portions of the Site and/or performed various construction activities associated with the creation of

the Gold Quartz Terrace subdivision on portions of the Site. The construction activities included, but were not limited to, construction of homes and townhouses on plots of land located within the Site, construction of Bryson Street and Goldstrike Court, construction of the culverts that run beneath these streets, installation of utility trenches, and the rerouting of the creek and rip rapping of the creek bank, none of which could be accomplished without moving, shifting, or otherwise redistributing the mine tailings that were present in the area prior to construction of the Gold Quartz Terrace subdivision. Some of the homes and townhouses built by Respondents were built directly on mine tailings, as evidenced by the analytical results of the samples taken from those properties and physical observations made during the sampling and on-going activities at the site. During that time, disposal of hazardous substances occurred on those portions of the Site.

V. CONCLUSIONS OF LAW

10. The Central Eureka Mine Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

11. The Respondents, Alpheus Kaplan and the Nehemiah Development Company, are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21);

12. The Respondents, through their construction activities, either disposed of hazardous substances at the Site and/or owned portions of the Site at times of disposal, as the term "disposal"

is defined in section 101(29) of CERCLA, 42 U.S.C. §9601(29), and/or currently own portions of the Site where hazardous substances have come to be located. Respondents are, therefore, each "liable parties" within the meaning of Section 107(a), 42 U.S.C. §9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a);

13. Arsenic is a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

14. The past, present or future migration of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

VI. DETERMINATIONS

15. The Director of the Hazardous Waste Management Division, U.S. EPA Region IX, has determined that an actual or threatened release of hazardous substances from each portion of the Site and/or facility currently and/or previously owned at times of disposal by the Respondents may present an imminent and substantial endangerment to the public health or welfare or the environment.

16. The actions required by this Order are necessary to protect the public health, welfare and the environment.

17. If performed satisfactorily, the actions required by this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

VII. NOTICE TO THE STATE

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), U.S. EPA has notified the State of California of the issuance of this Order by providing the Regional Board and California Department of Toxic Substances Control a copy of this Order.

VIII. WORK TO BE PERFORMED

A. General Provisions:

19. All work shall be conducted in accordance with: the applicable portions of the EPA Action Memorandum, dated March 21 1995 (attachment A); CERCLA; the NCP; U.S. EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by U.S. EPA; other applicable U.S. EPA guidance documents; and any report, document or deliverable prepared by U.S. EPA because Respondents fail to comply with this Order.

20. All plans, schedules, and other reports that require U.S. EPA's approval and are required to be submitted by the Respondents pursuant to this Order, upon approval by U.S. EPA, are incorporated into and enforceable under this Order.

21. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals and/or contractors with expertise in hazardous waste site investigation. The qualifications of the persons, contractors, and subcontractors undertaking the work for

Respondents shall be subject to U.S. EPA review and approval.

22. U.S. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1). Respondents will support U.S. EPA's initiation and conduct of activities carried out in its oversight responsibilities. Respondents shall also cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the site, including work performed by U.S. EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

B. Work and Deliverables:

Based on the Findings of Fact, Conclusions of Law, and Determinations, U.S. EPA hereby orders Respondents to perform the specific work set forth below under the direction of the U.S. EPA's On-Scene Coordinator, and to comply with all requirements of this Order:

23. Respondents shall prepare all workplans and specifications for the remediation of all parcels of land located in Groups 1, 2, and 6 at the Site, unless EPA agrees otherwise. Respondents shall, upon approval of the workplans and specifications by EPA pursuant to paragraph 30 below, perform all work required to remediate those parcels of land located in Groups 1, 2 and 6 at the Site, as more specifically set forth in attachment "A" to this UAO. This shall include, as required, the excavation of contaminated soil from those parcels, backfilling

the excavated portions of the parcels with clean fill, relandscaping of the excavated areas, and removal and proper disposal of the excavated soil at a location approved by EPA. Respondents shall be required to commence work on the Group 1, 2 and 6 parcels, specifically 365 Bryson Street, as directed by EPA's OSC on or before December 20, 1995.

24. Respondents, for the specific work required to be performed pursuant to this Order, unless otherwise agreed to by EPA, shall:

- a. provide notification to U.S. EPA as described below;
 - b. prepare a Quality Assurance Project Plan ("QAPP");
- and
- c. prepare a Health & Safety Plan.

25. Respondents shall notify U.S. EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). Notification will be provided within five (5) days after the Effective Date of this Order.

26. If U.S. EPA disapproves in writing of any person's or contractor's technical and/or experience qualifications, U.S. EPA will notify the Respondents in writing, and Respondents shall subsequently notify U.S. EPA within fourteen (14) days of Respondents' receipt of U.S. EPA's written notice, of the identity and qualifications of the replacement(s). A subsequent

U.S. EPA disapproval of the replacement(s) shall be deemed a failure to comply with the Order.

27. Subsequent to approval by U.S. EPA of the individual(s), contractor(s), or subcontractor(s) who will be responsible for the investigation, Respondents may propose that different individual(s), contractor(s) and/or subcontractor(s) to direct and supervise the work required by this Order. If Respondents wish to propose such a change, the Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s) and the name(s) of proposed contractor(s) and/or subcontractor(s). Any such individual(s), contractor(s) and/or subcontractor(s) shall be subject to approval by U.S. EPA. U.S. EPA shall give the Respondents its approval or disapproval within fourteen (14) days of receiving from the Respondents the information required by this paragraph. The naming of any replacement(s) by Respondents shall not relieve the Respondents of any of their obligations to perform the work required by this Order. A subsequent U.S. EPA disapproval of the replacement(s) shall be deemed a failure to comply with the Order.

28. Unless otherwise agreed to by EPA, Respondents shall prepare a Health and Safety Plan in conformance and compliance with Occupational Safety & Health Act ("OSHA") regulations and protocols. The Health and Safety Plan will include the eleven (11) elements described in U.S. EPA Guidance (EPA, October 1988), such as a health and safety risk analysis, a description of

monitoring and personal protective equipment, and medical monitoring. The Health & Safety Plan is due on or before December 20, 1995.

29. Respondents will notify U.S. EPA of their respective field activities at least one week before initiating them so that U.S. EPA may adequately schedule oversight tasks.

30. U.S. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All U.S. EPA comments on draft deliverables shall be incorporated by the Respondents. U.S. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, U.S. EPA shall specify the reasons for such disapproval, U.S. EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by U.S. EPA, U.S. EPA shall first notify the Respondents and then may draft its own report, document or deliverable and incorporate it as part of this Order, and/or seek penalties from the Respondents for failing to comply with this Order, and/or conduct the remaining work required by this Order.

31. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as U.S. EPA hereafter may designate in writing, and shall be deemed submitted on the date

received by U.S. EPA. Respondents shall submit two (2) copies of each document to U.S. EPA, and two (2) copies to Department of Toxic Substances Control.

32. For purposes of this Order, U.S. EPA's authorized representatives shall include, but not be limited to, the Department of Toxic Substances Control, and consultants and contractors hired by U.S. EPA to oversee activities required by this Order.

IX. OTHER APPLICABLE LAWS

33. Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

X. RECORD PRESERVATION

34. Respondents shall maintain, during the pendency of this Order, and for a minimum of ten (10) years after U.S. EPA provides notice to Respondents that the work has been completed, a central depository of the records and documents required to be prepared under this Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this ten-year period, Respondents shall notify U.S. EPA at least thirty (30) days before the documents are

scheduled to be destroyed. If U.S. EPA so requests, Respondents shall provide these documents to U.S. EPA.

XI. DESIGNATED PROJECT MANAGERS

35. U.S. EPA designates Brad Shipley, an employee of Region IX of U.S. EPA, as its primary On-Scene Coordinator ("OSC") who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions (or portions of the response action) when conditions present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within fifteen (15) days of the Effective Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. The U.S. EPA OSC will be U.S. EPA's designated representative at the site. To the maximum extent possible, all oral communications between Respondents and U.S. EPA concerning the activities performed pursuant to this Order shall be directed through U.S. EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 31 above.

36. U.S. EPA and Respondents may change their respective OSC and Project Coordinator. Such a change shall be accomplished

by notifying the other party in writing at least seven (7) days prior to the change except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

37. Consistent with the provisions of this Order, the U.S. EPA designates Dan Suter as an alternate OSC, in the event Brad Shipley is not present at the site or is otherwise unavailable. During such times, Mr. Suter shall have the authority vested in the On-Scene Coordinator ("OSC") by the NCP, as set forth in paragraph 35 above.

38. The absence of the U.S. EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the U.S. EPA OSC under federal law.

XII. MODIFICATION OF WORK REQUIRED

39. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the U.S. EPA OSC by telephone within twenty-four (24) hours of discovery of the new or changed circumstances. This verbal notification shall be followed by written notification postmarked within three (3) days of discovery of the new or changed circumstances.

40. The Director of the Hazardous Waste Management Division, U.S. EPA Region IX, may determine that in addition to tasks addressed herein, additional work may be required. Where consistent with Section 106(a) of CERCLA, the Director of the Hazardous Waste Management Division, U.S. EPA Region IX, may direct as an amendment to this Order that Respondents perform

these response actions in addition to those required herein. Respondents shall implement the additional tasks which the Director of the Hazardous Waste Management Division, U.S. EPA Region IX, identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director of the Hazardous Waste Management Division, U.S. EPA Region IX in any modifications to this Order.

XIII. SITE ACCESS

41. Respondents shall permit U.S. EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as U.S. EPA deems necessary. Nothing in this Order shall be deemed a limit upon U.S. EPA's authority under federal law to gain access to the Site.

42. To the extent that Respondents require access to land other than land they own in carrying out the terms of this Order, Respondents shall, within fifteen (15) days of the Effective Date of this Order, obtain access for U.S. EPA, its contractors and oversight officials; state oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within fifteen (15) days, they shall continue to use best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" includes but is not limited to, seeking judicial assistance, providing indemnification, and/or the payment of money as consideration for access. If access is not provided within the

time referenced above, U.S. EPA may obtain access under Sections 104(e) or 106(a) of CERCLA.

XIV. DELAY IN PERFORMANCE

43. Any delay in performance of any requirement of this Order that, in the U.S. EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

44. Respondents, as applicable, shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying U.S. EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for

any delay in performance.

45. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

46. If U.S. EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to paragraph 45 above, and specify in writing to the Respondents the new schedule for completion of the activity and/or submission of the document for which the extension was requested.

XV. ENDANGERMENT AND EMERGENCY RESPONSE

47. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's primary OSC, or, if the primary OSC is unavailable, U.S. EPA's alternate OSC. If neither of these persons is available, Respondents shall notify the U.S. EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondents shall take such action(s) in consultation with U.S.

EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

48. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

49. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or their contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order.

XVII. DISCLAIMER

50. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither U.S. EPA nor the United States shall be held

as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XVIII. ENFORCEMENT AND RESERVATIONS

51. U.S. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

52. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

53. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondents shall be liable under

CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

54. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

55. Notwithstanding compliance with the terms of this Order, including the completion of an U.S. EPA-approved response actions, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by U.S. EPA.

56. U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

57. U.S. EPA expressly reserves all rights and defenses that it may have, including the U.S. EPA's right both to disapprove of work performed by Respondents and to request the Respondents perform tasks in addition to those detailed in this Order, as provided in Section VIII (Work to be Performed) of this Order.

58. This Order does not release Respondents, individually or collectively, from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of

action, or demand which lawfully may be asserted by representatives of the United States or the State of California.

59. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order.

XIX. REIMBURSEMENT OF OVERSIGHT COSTS

60. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Central Eureka Mine Site by name and make reference to this Order. Respondents shall send - simultaneously to the U.S. EPA OSC notification of any amount paid, including a photocopy of the check.

61. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the

day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XX. NOTICE OF INTENT TO COMPLY

62. Respondents shall, within two (2) days of the Effective Date of this Order, provide written notice to U.S. EPA of Respondents' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XXI. OPPORTUNITY TO CONFER

63. Respondents may, within three (3) days of receipt of this Order, request a conference with the Chief of the Remedial Action Branch in the Hazardous Waste Management Division, or whomever the Chief of the Remedial Action Branch may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at U.S. EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

64. At any conference held pursuant to Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, the Respondents shall contact David Rabbino, Assistant Regional Counsel, at (415) 744-1336.

65. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order.

If such a conference is held, the Respondents may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to David Rabbino, Assistant Regional Counsel, at the address cited above.

66. Respondents are hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

XXII. SEVERABILITY

67. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court

to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXIII. PENALTIES FOR NONCOMPLIANCE

68. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

XXIV. EFFECTIVE DATE

69. This Order is effective three (3) days following receipt by Respondents unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by U.S. EPA.

XXV. TERMINATION AND SATISFACTION

70. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from U.S. EPA that

Respondents have demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks which U.S. EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 96-06

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: Keith A. Takata
Keith A. Takata, Deputy Director
Hazardous Waste Management Division
Region 9

Date: 12-13-95

EPA Region 9 Contacts:

Brad Shipley
On-Scene Coordinator (H-6-5)
Hazardous Waste Management Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2287

David Rabbino
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-1336

EXHIBIT "A"

Work to be performed by Respondents:

1) All response actions required to remediate the yards or plots located on properties currently owned by Alpheus Kaplan and/or Nehemiah Development Company. These response actions include, but are not limited to, excavation of all contaminated soils in those yards or plots, backfilling with clean fill, relandscaping of the yards or plots, and transportation of all excavated contaminated soils to any lawful location approved by EPA. The plots currently owned by Alpheus Kaplan are:

- * 81/85 Bryson Street
- * 131/135 Bryson Street
- * 151/155 Bryson Street
- * 100/104 Bryson
- * 80/84 Bryson
- * 50/54 Bryson
- * lots 12 and 13

2) All response actions required to remediate the yards or plots located in what are referred to as Group 1, Group 2, and Group 6. These response actions include, but are not limited to, excavation of all contaminated soils in those yards or plots, backfilling with clean fill, relandscaping of the yards or plots, and transportation of all excavated contaminated soils to any lawful location approved by EPA. These groups include properties located at:

Group 1: The following homes on Bryson Street: 71/75; 81/85; 115; 121/125; 131/135; 141/145; 151/155; 161/165; the vacant lot located between 81/85 and 115 Bryson Street; the vacant lot adjacent to 161/165 Bryson Street; and the following homes on Gold Strike Court: 370 and 360.

Group 2: The following homes on Gold Strike Court: 270; 275; 285; 325; 335; 345; 355; 365; the vacant lot between 285 and 325 Gold Strike Court; and the vacant lot adjacent to 365 Gold Strike Court.

Group 6: The following homes on Bryson Street: 40/44; 50/54; 70/74; 80/84; 86/90; 100/104; 110/114; the vacant lot adjacent to 40/44 Bryson Street; and the vacant lot between 50/54 and 70/74 Bryson Street.

Specifications and/or work plans for work to be performed on each yard listed above may be developed by EPA's OSC and furnished in writing to Respondents Alpheus Kaplan and NDO in lieu of these Respondents developing and submitting Work Plans and/or specifications pursuant to paragraph 23 of the UAO. Each of the specific plans for each yard, and any modifications thereto, shall be incorporated herein once finally approved by EPA.

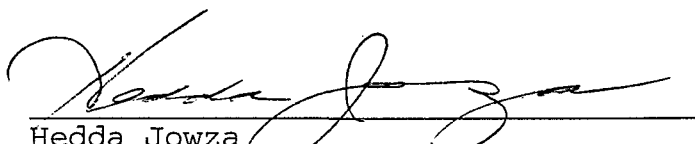
Unilateral Administrative Order 96-06

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of the United States Environmental Protection Agency, Office of Regional Counsel, Region IX, in San Francisco, California, and that I am over eighteen (18) years of age. On December 13, 1995, I personally hand delivered to the law offices of Daniel F. Reidy, Esq., at 545 Sansome Street, Suite 825, a copy of the "Unilateral Administrative Order for Partial Performance of Removal Action," EPA docket number 96-06, issued by EPA to Alpheus Kaplan and the Nehemiah Development Company, a partnership.

Date:

12-13-95


Hedda Jowza
Office of Regional Counsel
U.S. EPA, Region IX